

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN SERVICES

In the Matter of the
License of Jody Ann Radke
to Provide Family Day Care

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Peter C. Erickson at 2:00 p.m. on Wednesday, October 27, 1993, in the Olmsted County Government Center, Rochester, Minnesota. The record closed at the conclusion of the hearing.

Susan J. Mundahl, Assistant County Attorney, Olmsted County Government Center, 151 4th street S.E , Rochester, Minnesota 55904, appeared on behalf of Olmsted County Social Services. Jody Ann Radke, the Licensee herein, 2005 Valley High Drive, Rochester, Minnesota 55901, appeared and testified on her own behalf

Notice is hereby given that, pursuant to Minn. stat. sec. 14.61 the final decision of the Commissioner of Human Services shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Exceptions to this Report, if any, shall be filed with the Commissioner,

STATEMENT OF ISSUE

The issue to be determined in this proceeding is whether grounds exist for the revocation of Ms. Radke's family day care license.

based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Jody Ann Radke is a licensed family day care provider and provides day care in her home located at 2005 Valley High Drive, Rochester, Minnesota. Ms. Radke has a minor son and is a single parent.

2. On August 25, 1993, Ms. Radke pleaded guilty to the felony offense

of sale of a controlled substance in the fifth degree, This guilty plea involved sales which had occurred in Ms. Radke's home on July 30, 1992, and August 14, 1992. At the time of the sale which occurred on August 14, 1992, day care was being provided to children in Radke's home. Specifically, Ms.

Radke sold a small amount of marijuana to another person on both dates referenced which constitutes a violation of Minn. Stat, sec. 152.025, subd. 1(1).

3. At the hearing on this matter, Ms. Radke admitted smoking marijuana in her home on a daily basis, at night. Because she will be sentenced for the sale offense on Monday, November 1, she intends to quit using marijuana at that time.

4 Four mothers of children who Ms. Radke provides day care for are continuing to use her services despite the drug-sale conviction. They feel that Ms. Radke is a good day care provider and that what she does on her own time is her own business? These mothers have no hesitation at this time in taking their children to Ms. Radke's home.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following;

CONCLUSIONS

I The Administrative Law Judge and the Commissioner of Human Services have jurisdiction in this matter pursuant to Minn. Stat. sec. 14.50 and 245A.08. The Notice of Hearing was proper and all substantive and procedural requirements of law and rule have been met.

2. Minn Rule 9502.0335 states that a providers license shall be revoked if there is a disqualification under Rule 9543.3070. Subpart I of Rule 9543.3070 enumerates criminal convictions which constitute a disqualification for an individual to participate in programs serving children or adults Paragraph (60) of Item A. of subpart I refers specifically to "felony convictions under Minnesota Statutes, Chapter 152 (prohibited drugs)." Ms. Radke pled guilty to a felony conviction of Minn. Stat. 1 52 . 02 5 .

3. The conviction referenced above constitutes mandatory grounds for the revocation of Ms, Radke's family day care license,

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Commissioner's Order revoking Jody Ann Radke's family day care license be AFFIRMED.

Dated this 4th day of November, 1992.

PETER C.ERICKSON
administrative Law Judge

NOTICE

Pursuant to Minn. Stat. 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped, no transcript prepared.